

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4148 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BABIBEN W/O SHANTUBHAI N PATEL

Versus

COMMISSIONER OF POLICE SURAT CITY AND ORS

Appearance:

MS BANNA S DUTTA for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. The petitioner has been detained by virtue of an order passed by the Commissioner of Police, Surat city, Surat on 5th April 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act' for

short]. The grounds of detention indicate that the petitioner was detained after taking into consideration four offences registered against the detainee, besides the statements of two anonymous witnesses. After considering the possibility of resorting to less drastic remedy, the detaining authority concluded that, in order to meet with the requirement of immediately preventing the detainee from pursuing her illegal and anti social activities, she is required to be detained under PASA.

2. The detainee assails the order of detention by this petition on the ground that, despite demand having been made, the authorities concerned have not supplied necessary and relevant documents and the petitioner's right of making an effective representation is, therefore, infringed and the continued detention, therefore, would be vitiated.

3. Ms. Dutta, learned Advocate appearing for the petitioner has pressed into service only this ground.

4. Mr. Bukhari, learned AGP has opposed this petition. On instructions, he stated at the bar that the Government had decided representation on 2nd August 1999 and had directed the detaining authority to supply the chemical analyzers report demanded by the detainee. He is however at loss to state anything as to whether that direction of the Government was in fact complied with by the detaining authority or not. In this regard, Ms. Dutta makes a statement at the bar that the chemical analyzers report has not been supplied in fact to the detainee.

5. None of the respondents have filed any affidavit in reply.

6. Considering the rival side contention, it is amply clear that the representation dated 30th July 1999 was made on behalf of the detainee and statements of witnesses and FSL Report with the Report of the Chemical Analyzer were demanded in respect of the cases which are pending investigation. The Government on receiving the representation directed the detaining authority on 2nd August 1999 to supply the report of the chemical analyzer as per statement made at the bar by the learned AGP. There is a statement made at bar by Ms. Dutta on having received instructions from the client that the Chemical Analyser's report or the FSL Report are not supplied to the detainee. The detaining authority has not filed any affidavit to indicate that such report is in fact supplied. In this view of the matter, the petition

deserves to be allowed as non-supply of relevant documents has resulted into infringement of right of making an effective representation as envisaged under Article 22[5] of the Constitution of India.

7. The petition is, therefore, allowed. The impugned order of detention is quashed. The detenue Bebiben w/of Shantubhai Nanubhai Patel, is ordered to be set at liberty, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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